

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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**JAM PRODUCTIONS, LTD. and EVENT  
PRODUCTIONS, INC.**

**and**

**Case No. 13-CA-177838**

**THEATRICAL STAGE EMPLOYEES UNION  
LOCAL NO. 2, IATSE**

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**RESPONDENTS' EXCEPTIONS  
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

**Submitted by:**

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**July 10, 2017**

Pursuant to Section 102.46(e) of the Rules and Regulations of the National Labor Relations Board, Respondents Jam Productions, Ltd. and Event Productions, Inc. file these exceptions to the Decision of Administrative Law Judge (“ALJ”) Michael A. Rosas (the “ALJD”) [JD-42-17], issued on May 26, 2017 in this case on the grounds they are contrary to the stipulated record evidence, much of which the ALJ ignored, or are contrary to established law, or both, and as explained in the accompanying brief in support of these exceptions.

1. Respondents except to the ALJ’s finding and conclusion that there was no meeting of the minds and therefore no agreement to settle the underlying case in Case No. 13-CA-160319. ALJD 7:28-45; 8:38-43. This finding and conclusion is contrary to the stipulated evidence and established law. In support of this exception, Respondents rely upon JX 5-15, 18-22, 24, Stip. ¶ 17, Appendix 4 to Resp. Br. Supp. Exceptions.

2. Respondents except to the ALJ’s finding and conclusion referred to in Exception 1 that there was no meeting of the minds and hence no agreement (ALJD 7:28-45; 8:38-43), made sua sponte, as well as all related findings, conclusions, proposed remedies and proposed orders (ALJD 7:18-9:21), because it also violated Respondents’ due process rights. In support of this exception, Respondents rely upon JX 1(a), 1(b), 29, 30, 32, Stip. ¶ 38, and the briefs filed by all parties in this case to the ALJ.

3. Respondents except to the ALJ’s finding that Shaw usually called crew members in order of seniority, with few exceptions (ALJD 2:38-43) as contrary to the stipulated evidence. In support of this exception, Respondents rely upon Appendix to Resp. Br. Supp. Exceptions, Chart 1 (and JX 33 and 26 from which it was compiled) and Chart 2.

4. Respondents except to the ALJ's finding that on September 22, 2015 Event Productions hired Behrad Emami to replace Lynch as production manager and Shaw as crew manager at the Riviera (ALJD 3:11-12) to the extent that implies Emami had not worked for Respondents before that date, as contrary to the stipulated evidence. In support of this exception, Respondents rely upon JX 24.

5. Respondents except to the ALJ's finding that between September 22 and 25, 2015 Emami worked with Shaw and Lynch to put together a crew for his first show on September 25, 2015 (ALJD 3:12-14) as contrary to the stipulated evidence. In support of this exception, Respondents rely upon JX 24.

6. Respondents except to the ALJ's finding that there were 55 stagehands entitled to relief under the settlement agreement in Case No. 13-CA-160319 (ALJD 1, 1<sup>st</sup> paragraph (lines unnumbered); 2:22-33; 3:36-4:6) as contrary to the stipulated evidence. In support of this exception, Respondents rely upon JX 5.

7. Respondents except to the ALJ's finding and conclusion that the settlement agreement required Respondents to "reinstate" 55 stagehands from the Shaw Crew (ALJD 1, 1<sup>st</sup> paragraph (lines unnumbered)) as contrary to the stipulated evidence. In support of this exception, Respondents rely upon JX 4-15, 18-22, 24, Stip. ¶ 17.

8. Respondents except to the ALJ's finding, analysis and conclusion and framing of the issue that "[t]he primary issue in this case is whether the phrase 'immediate and full participation in the on-call list' required a return to the status quo ante, thus giving the 55 stagehands seniority or other preference over the stagehands who replaced them, or simply the right to be offered work assignments equally with their replacements" (ALJD 1, 1<sup>st</sup> paragraph (lines unnumbered)), as misleading and incomplete, and as contrary to the stipulated evidence and

established law. In support of this exception, Respondents rely upon JX 4-15, 18-22, 24, Stip. ¶ 17.

9. Respondents except to the ALJ's finding that "Initially, Region 13 proposed that the Shaw Crew be offered 'immediate and full participation in the on-call list without discrimination because of their union membership or support for the Union and without prejudice to their seniority or any other rights and/or privileges previously enjoyed'" (ALJD 4:18-21) as contrary to the stipulated evidence. In support of this exception, Respondents rely upon JX 7.

10. Respondents except to the ALJ's findings and conclusions that failed to consider or to properly consider and accord proper significance to the stipulated evidence that Respondents rely upon in Exceptions 8 and 9.

11. Respondents except to the ALJ's finding that Respondents proposed and agreed to the "reinstatement and recall" of the Shaw Crew (ALJD 4:24-26), that the final agreement included "reinstatement" (ALJD 5:13), that the Shaw Crew were "recalled" (ALJD 5:23), and that "reinstatement" occurred (ALJD 5:39 & 41, 6:40), as contrary to the stipulated evidence. In support of this exception, Respondents rely upon JX 4-15, 18-22, 24, Stip. ¶ 17.

12. Respondents except to the ALJ's finding that in offering work to the Shaw Crew after the settlement, "Emami proceeded with the belief that 'full participation' by members of the Shaw Crew meant that they would share the work equally with the New Crew employees. Emami was not otherwise instructed on how to offer work to the Shaw Crew members, except to 'make an effort to use those listed as the 'most active'" (ALJD, 5:26-30) as inaccurate and contrary to the stipulated evidence. In support of this exception, Respondents rely upon JX 18, 19, 24.

13. Respondents except to the ALJ's finding that the Shaw Crew received fewer offers to work under Emami than they had received under Shaw (ALJD 5:34-42), implying discrimination, as incomplete and misleading for failing to consider the stipulated evidence and as contrary to the stipulated evidence. In support of this exception, Respondents rely upon JX 19, 26, 28.

14. Respondents except to the ALJ's finding, analysis and conclusion and framing of the issue that "[t]he resolution of the unfair labor practice allegations depends on an interpretation as to what the General Counsel and Respondents intended by the 'immediate and full participation in the on-call list' by Shaw Crew employees in the settlement agreement in Case 13-CA-160319" (ALJD 44-46) as misleading, inaccurate, incomplete and contrary to the stipulated evidence. In support of this exception, Respondents rely upon JX 4-15, 18-22, 24, Stip. ¶ 17.

15. Respondents except to the ALJ's finding, analysis and conclusion that "[t]he Union specifically objected to the inclusion of a non-admissions clause and the omission of a provision assuring the reinstated Shaw Crew employees of seniority in the on-call list" (ALJD 7:2-4) as inaccurate and incomplete. In support of this exception, Respondents rely upon JX 20.

16. Respondents except to the ALJ's finding, analysis and conclusion that "the parties reasonably disagree as to whether 'immediate and full participation in the on-call list' requires a return to the on-call list previously used for the Shaw Crew or simply inclusion into an on-call list with the New Riviera Crew. As it relates to 'seniority and any other rights and/or privileges previously enjoyed' by Shaw Crew employees, the phrase is silent and thus unclear or susceptible of more than one interpretation" and that the agreement is ambiguous (ALJD 7:18-23) as misleading, inaccurate and incomplete and contrary to the stipulated evidence and established law. In support of this exception, Respondents rely upon JX 4-15, 18-22, 24 Stip. ¶¶ 17, 21.

17. Respondents except to the ALJ's finding, analysis and conclusion that "[t]he extrinsic stipulated evidence in this record, however, is inconclusive as to what the parties intended in the settlement agreement. Respondents rely on the General Counsel's inclusion of seniority language in the initial drafts of the settlement agreement and its removal from the final version of the agreement, over the Union's objection, after Respondents rejected that language. On the other hand, there is stipulated evidence that the General Counsel, in responding to the Union's objection, expressed his opinion that the final version of the settlement agreement preserved the Shaw Crew's seniority rights notwithstanding the omission of specific language to that effect." (ALJD 7:28-34) as contrary to the stipulated evidence and established law. In support of this exception, Respondents rely upon JX 4-15, 18-22, 24, Stip. ¶¶ 17, 21.

18. Respondents except to the ALJ's finding, analysis and conclusion that "[t]he patent ambiguity of the requirement that Respondents provide the Shaw Crew with 'immediate and full participation in the on-call list' is further evident from the agreement to make whole the Shaw Crew employees for the entire backpay period, while omitting any reference to the rights of the New Riviera Crew that replaced the Shaw Crew members during that period. Indeed, the settlement agreement fails to mention the New Riviera Crew in any way." (ALJD 7:36-40) as contrary to the stipulated evidence and law and a logical fallacy. In support of this exception, Respondents rely upon JX 1(b), 4-15, 18-22, 24, Stip. ¶¶ 17, 21.

19. Respondents except to the ALJ's finding, analysis and conclusion that "[b]ased on the stipulated evidence, however, it is clear that there was no meeting of the minds as to Respondents' obligations under the settlement agreement ... upon which the parties premise their theories of this case" (ALJD 7:43-45) as contrary to the stipulated evidence and established law,

as well as a violation of Respondent's due process rights. In support of this exception, Respondents rely upon JX 1(a), 4-15, 18-22, 24, Stip. ¶¶ 17, 21.

20. Respondents except to the ALJ's recommendation that the Board set aside the settlement in Case 13-CA-160319, reinstate those allegations, and remand that case to the Division of Judges for a trial of both the reinstated allegations and those in the instant complaint, and to make the necessary findings, analysis, and conclusions of law (ALJD 7:45-8:1) as contrary to the stipulated evidence and established law. In support of this exception, Respondents rely upon all of the stipulated evidence cited above including JX 1(a), 1(b), 4-15, 18-22, 24, 26-30, 33, Stip. ¶¶ 17, 21, 46, App. to Resp. Br. Supp. Exceptions 1-5.

21. Respondents except to the ALJ's Conclusion of Law No. 3 (ALJD 8:13-23) to the extent it is contrary to the stipulated evidence of which individuals were discharged. In support of this exception, Respondents rely upon JX 5.

22. Respondents except to the ALJ's "Conclusion of Law" No. 4 (ALJD 8:25-31) referring to the settlement as "reinstating" the Shaw Crew employees as contrary to the stipulated evidence and established law. In support of this exception, Respondents rely upon JX 4-15, 18-22, 24, Stip. ¶ 17.

23. Respondents except to the ALJ's "Conclusion of Law" No. 5 that beginning April 7, 2016, Respondents offered work equally to the Shaw Crew and New Crew (ALJD 8:33-36) as contrary to the stipulated evidence. In support of this exception, Respondents rely upon JX 24, 26-28, Stip. ¶ 46.

24. Respondents except to the ALJ's "Conclusion of Law" No. 6 that the settlement agreement was patently ambiguous, establishes that there was no meeting of the minds between the parties and is unenforceable (ALJD 8:38-43, 9:3-7), as contrary to the stipulated evidence and

established law. In support of this exception, Respondents rely upon all the stipulated evidence cited above including JX 1(a), 1(b), 4-15, 18-22, 24, 26-30, 33, Stip. ¶¶ 17, 21, 46, App. to Resp. Br. Supp. Exceptions 1-5.

25. Respondents except to the ALJ's recommended "Remedy" that the Board set aside the settlement in Case 13-CA-160319, reinstate those allegations, and remand this proceeding to the Division of Judges for a trial of both the reinstated allegations and those in the instant complaint, and to make the necessary findings, analysis, and conclusions of law (ALJD 9:3-11), as contrary to all the stipulated evidence cited above and established law, including JX 1(a), 1(b), 4-15, 18-22, 24, 26-30, 33, Stip. ¶¶ 17, 21, 46, App. to Resp. Br. Supp. Exceptions 1-5.

26. Respondents except to the ALJ's recommended "Order" that the Board set aside the settlement in Case 13-CA-160319, reinstate those allegations, and remand that case to the Division of Judges for a trial of both the reinstated allegations and those in the instant complaint, and to make the necessary findings, analysis, and conclusions of law (ALJD 9:13-21), as contrary to the stipulated evidence and established law. In support of this exception, Respondents rely upon all the stipulated evidence cited above including JX 1(a), 1(b), 4-15, 18-22, 24, 26-30, 33, Stip. ¶¶ 17, 21, 46, App. to Resp. Br. Supp. Exceptions 1-5.

27. Respondents except to the ALJ's failure to find and conclude that Respondents complied with the settlement agreement and the National Labor Relations Act as contrary to the stipulated evidence and established law. In support of this exception, Respondents rely upon all the stipulated evidence cited above including JX 1(a), 1(b), 4-15, 18-22, 24, 26-30, 33, Stip. ¶¶ 17, 21, 46, App. to Resp. Br. Supp. Exceptions 1-5.



28. Respondents except to the ALJ's failure to find and conclude that under the settlement agreement there would be a larger combined crew consisting of the New Crew and the Shaw Crew while the size of the crew used post-settlement was reduced to 9 individuals from the 14 pre-discharge, that Respondents were not required to offer work by seniority or to discharge the New Crew, that Respondents complied with the provision of the settlement agreement that they offer "immediate and full participation in the on-call list ... without discrimination because of their union membership or support for the Union" (JX 5, 1<sup>st</sup> We Will), that Respondents offered more work opportunities to the Shaw Crew members (54% of the work offers) than to the New Crew members, even though the Shaw Crew members constituted just 47% of the combined crew, and that Shaw Crew members filled more of the more desirable all-day jobs than would have been expected by random selection and the same number of total slots as expected on a random basis, that Respondents offered Shaw's four main stagehands more work opportunities than would have been expected by random selection, and that Respondents were not required to offer the Shaw Crew members the same amount of work as before the discharge but only to treat them without discrimination, as contrary to the stipulated evidence and established law. In support of this exception, Respondents rely upon all the stipulated evidence cited above including JX 1(a), 1(b), 4-15, 18-22, 24, 26-30, 33, Stip. ¶¶ 17, 21, 46, App. to Resp. Br. Supp. Exceptions 1-5.

29. Respondents except to the ALJ's failure to find and conclude that the General Counsel failed to carry his burden of proving discrimination against the Shaw Crew members, when Respondents made more offers of work to the Shaw Crew members than to the New Crew members even though the Shaw Crew comprised less than half of the combined crew, and the General Counsel failed to prove that the Shaw Crew was more qualified than the New Crew, as contrary to the stipulated evidence and established law. In support of this exception, Respondents

rely upon all the stipulated evidence cited above including JX 1(a), 1(b), 4-15, 18-22, 24, 26-30, 33, Stip. ¶¶ 17, 21, 46, App. to Resp. Br. Supp. Exceptions 1-5.

30. Respondents except to all findings, conclusions, analyses, rationales and recommendations of the ALJ that are inconsistent with the Exceptions set forth above.

31. The points of fact and law supporting these exceptions are discussed in more detail in Respondents' Brief in Support of their Exceptions.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, the undersigned attorney, being duly sworn, state that on July 10, 2017, I had served the **Respondents' Exceptions To The Administrative Law Judge's Decision** upon the following:

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